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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 KENNETH MILLS,

No. CIV S-04-1649-DFL-CMK

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 STATE OF CALIFORNIA, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
18 to 42 U.S.C. § 1983. On September 1, 2004, the court directed plaintiff to submit either an
19 application for leave to proceed in forma pauperis or the filing fee within 30 days. That order was
20 served by the Clerk of the Court on plaintiff at the following address, which was plaintiff's
21 address of record as of the date of service:

22 San Joaquin County Jail
23 999 West Matthews Road
French Camp, CA 95231

24 That order was returned as undeliverable on October 13, 2004.

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1 On March 3, 2005, plaintiff submitted a document to the court. That document
2 reflects that plaintiff changed addresses. In the interest of justice, on October 6, 2005, the court
3 issued an order construing the March 3, 2005, document as a notice of change of address to the
4 following:

5 Metropolitan State Hospital
6 11401 S. Bloomfield Avenue
Norwalk, California, 90650

7 The October 6, 2005, order also provided plaintiff an additional opportunity to comply with the
8 court's initial September 1, 2004, order, and warned plaintiff that failure to comply may result in
9 dismissal of this case. The October 6, 2005, order was also returned as undeliverable.

10 On October 21, 2005, the court issued an order directing plaintiff to show cause in
11 writing why this action should not be dismissed for lack of prosecution and failure to comply with
12 court rules and orders. See Local Rule 11-110. That order was served on plaintiff at both of the
13 foregoing addresses. The order was again returned undeliverable at either address.

14 The court must weigh five factors before imposing the harsh sanction of dismissal.
15 See Bautista v. Los Angeles County, 216 F.3d 837, 841 (9th Cir. 2000); Malone v. U.S. Postal
16 Service, 833 F.2d 128, 130 (9th Cir. 1987). Those factors are: (1) the public's interest in
17 expeditious resolution of litigation; (2) the court's need to manage its own docket; (3) the risk of
18 prejudice to opposing parties; (4) the public policy favoring disposition of cases on their merits;
19 and (5) the availability of less drastic sanctions. See id.; see also Ghazali v. Moran, 46 F.3d 52,
20 53 (9th Cir. 1995) (per curiam). A warning that the action may be dismissed as an appropriate
21 sanction is considered a less drastic alternative sufficient to satisfy the last factor. See Malone,
22 833 F.2d at 132-33 & n.1. The sanction of dismissal for lack of prosecution is appropriate where
23 there has been unreasonable delay. See Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir.
24 1986). Dismissal has also been held to be an appropriate sanction for failure to follow local rules,
25 see Ghazali, 46 F.3d at 53, and failure to inform the district court and parties of a change of
26 address pursuant to local rules, see Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (per

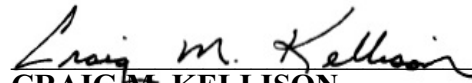
1 curiam).

2 Having considered these factors, and in light of plaintiff's failure to inform the
3 court of his current address, the court concludes that dismissal is appropriate.

4 Based on the foregoing, the undersigned recommends that this action be dismissed
5 and that all pending motions be denied as moot.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
8 after being served with these findings and recommendations, any party may file written objections
9 with the court. The document should be captioned "Objections to Magistrate Judge's Findings
10 and Recommendations." Failure to file objections within the specified time may waive the right
11 to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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13 DATED: November 2, 2005.

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16 **CRAIG M. KELLISON**
17 UNITED STATES MAGISTRATE JUDGE
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